

**UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

CHAIRMAN:

Judge Wm. Terrell Hedges
United States District Court
Middle District of Florida

MEMBERS:

Judge John F. Keenan
United States District Court
Southern District of New York

Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vrtil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

DIRECT REPLY TO:

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Clerk of the Panel
One Columbus Circle, NE
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February 16, 2006

Robert C. Heinemann, Clerk
130 United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201-1818

Re: MDL-1596 -- In re Zyprexa Products Liability Litigation

(See Attached Schedule A of Order)

Dear Mr. Heinemann:

I am enclosing a certified copy and one additional copy of a transfer order filed today by the Panel in the above-captioned matter. The order is directed to you for filing.

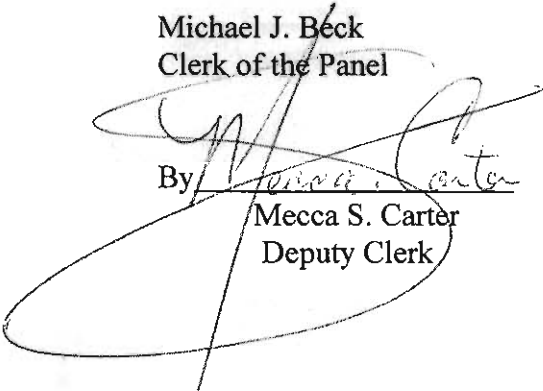
The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred."

A list of involved counsel is attached.

Very truly,

Michael J. Beck
Clerk of the Panel

By


Mecca S. Carter
Deputy Clerk

Enclosures/Attachment

cc: Transferee Judge: Judge Jack B. Weinstein
Transferor Judges: (See Attached List of Judges)
Transferor Clerks: James Woodward; Patricia L. Brune

FEB 16 2006

FILED
CLERK'S OFFICE

DOCKET NO. 1596

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL**

**ORDER OF TRANSFER AND SIMULTANEOUS SEPARATION AND
REMAND OF CERTAIN CLAIMS**

Before the Panel are motions brought, respectively, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in seventeen Eastern District and seventeen Western District of Missouri actions to vacate the Panel's orders conditionally transferring the actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. In one of the Eastern District of Missouri actions,¹ a physician defendant moves for separation and remand under Section 1407 of the claims against her. Also before the Panel are motions brought, respectively, by defendants Bristol-Myers Squibb Co. (Bristol-Myers) and Janssen, L.P. (Janssen) to vacate one of the Panel's orders insofar as it relates to claims in ten Eastern District of Missouri actions against these defendants.² Specifically, these defendants ask the Panel to separate and simultaneously remand the claims against them to the Eastern District of Missouri at the time of transfer. Defendant Eli Lilly and Co. (Lilly) opposes the motions to vacate brought by plaintiffs and the physician defendant and urges inclusion of the actions in the MDL-1596 proceedings, but supports separation and remand under Section 1407 of the claims against the other pharmaceutical defendants.

On the basis of the papers filed and hearing session held, the Panel finds that all 38 actions encompassed by the various overlapping motions involve common questions of fact with the actions

¹ *Reed Thompson v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1928.

² *Gloria Black v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1921; *Cindy Buck v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1922; *Clifford Ferrin v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1923; *Pamela Journey v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1924; *Thomas McGee, etc. v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1925; *Michelle McMahon v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1926; *Brent Thomas v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1927; *Reed Thompson v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1928; *Tamila Watkins v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1930; and *James Keetch v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1931. Janssen is a defendant in each of these ten actions; Bristol-Myers is a defendant in only the last listed action (*Keetch*).

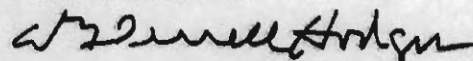
in this litigation previously transferred to the Eastern District of New York, and that transfer of these actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel further finds that transfer of these actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Eastern District of New York was a proper Section 1407 forum for actions involving claims of liability related to the prescription drug Zyprexa. *See In re Zyprexa Products Liability Litigation*, 314 F.Supp.2d 1380 (J.P.M.L. 2004). Any motions for remand to state court or for dismissal can be presented to and decided by the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

The objecting physician defendant argues, inter alia, that the presence of individual questions of fact should militate against inclusion of the claims against her in the MDL-1596 proceedings. We are unpersuaded by this argument. Inclusion of the claims against the defendant doctor pertaining to Zyprexa in the MDL-1596 proceedings has the salutary effect of placing all related claims in this docket before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; and 2) allows pretrial proceedings with respect to any individual issues to proceed concurrently with pretrial proceedings on common issues. *See, e.g., In re Ephreda Products Liability Litigation*, 314 F.Supp.2d 1373, 1375 (J.P.M.L. 2004). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.* The Panel is persuaded, however, that claims involving prescription drugs other than Zyprexa in ten Eastern District of Missouri actions do not share sufficient questions of fact with claims relating to Zyprexa to warrant inclusion of the former claims in MDL-1596 proceedings.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the 38 actions listed on Schedule A are transferred to the Eastern District of New York and, with the consent of that court, assigned to the Honorable Jack B. Weinstein for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

IT IS FURTHER ORDERED that claims in ten actions identified in the second footnote of this order relating to prescription medications other than Zyprexa are simultaneously separated and remanded to the Eastern District of Missouri.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1596 -- In re Zyprexa Products Liability Litigation

Eastern District of Missouri

Charles Reynolds v. Eli Lilly & Co., et al., C.A. No. 1:05-173
Phyllis Edwards v. Eli Lilly & Co., et al., C.A. No. 1:05-174
Linda Faye Robinson v. Eli Lilly & Co., et al., C.A. No. 1:05-176
Jennifer Morlan v. Eli Lilly & Co., et al., C.A. No. 1:05-189
Gilbert Sabala v. Eli Lilly & Co., et al., C.A. No. 2:05-65
William Anthony Ewing v. Eli Lilly & Co., et al., C.A. No. 2:05-66
Valarie A. Chazelle v. Eli Lilly & Co., et al., C.A. No. 4:05-1806
Patrick McDonald v. Eli Lilly & Co., et al., C.A. No. 4:05-1869
Gloria Black v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1921
Cindy Buck v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1922
Clifford Ferrin v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1923
Pamela Journey v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1924
Thomas McGee, etc. v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1925
Michelle McMahon v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1926
Brent Thomas v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1927
Reed Thompson v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1928
Tamila Watkins v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1930
James Keetch v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1931
Shirley Helms v. Eli Lilly & Co., et al., C.A. No. 4:05-1936
Gloria Lothridge v. Eli Lilly & Co., et al., C.A. No. 4:05-1937
Joy Hufferd v. Eli Lilly & Co., et al., C.A. No. 4:05-1938

Western District of Missouri

Robert Henry v. Eli Lilly & Co., et al., C.A. No. 2:05-4317
Lindell Schmidt v. Eli Lilly & Co., et al., C.A. No. 2:05-4320
Christina Quebedeaux v. Eli Lilly & Co., et al., C.A. No. 2:05-4326
Ronald Forbes v. Eli Lilly & Co., et al., C.A. No. 2:05-4331
Barbara Benton v. Eli Lilly & Co., et al., C.A. No. 2:05-4337
Gina M. Easley v. Eli Lilly & Co., et al., C.A. No. 3:05-5150
Gregory Bradley v. Eli Lilly & Co., et al., C.A. No. 4:05-932
Janice A. Johnson v. Eli Lilly & Co., et al., C.A. No. 4:05-960
Loretta Eads v. Eli Lilly & Co., et al., C.A. No. 4:05-987
Michelle Wolfe v. Eli Lilly & Co., et al., C.A. No. 4:05-990
Connie Stewart v. Eli Lilly & Co., et al., C.A. No. 6:05-3473
James Caffey v. Eli Lilly & Co., et al., C.A. No. 6:05-3474
Raymond Mincks v. Eli Lilly & Co., et al., C.A. No. 6:05-3485
Ron Lipe v. Eli Lilly & Co., et al., C.A. No. 6:05-3487
Bacil Warson v. Eli Lilly & Co., et al., C.A. No. 6:05-3488
Laura Davis v. Eli Lilly & Co., et al., C.A. No. 6:05-3490
Twila May Freeman v. Eli Lilly & Co., et al., C.A. No. 6:05-3504

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